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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS AGUAYO,

No. C 10-01178 JSW

Plaintiff,

**ORDER SETTING BRIEFING
SCHEDULE AND ORDER TO
SHOW CAUSE RE
JURISDICTION AND SETTING
HEARING ON EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

v.

WACHOVIA, et al.,

Defendants.

On March 12, 2010, Plaintiff filed a complaint in the Superior Court of the State of California for the County of Contra Costa. On that March 22, 2010, Plaintiff filed an *Ex Parte* Application for a Temporary Restraining Order in the state court. On that same date, Defendant Wachovia Mortgage removed the action to this Court. Plaintiff re-filed an *ex parte* application for a temporary restraining order in this Court. According to Plaintiff's application a trustee sale is scheduled to go forward on March 24, 2010, although Plaintiff does not set forth the time at which the sale is scheduled to occur.

Having reviewed Plaintiff's application and giving the impending sale, the Court concludes a response from the Defendants is warranted. However, in their response, Defendants are ORDERED TO SHOW CAUSE as to why this Court has jurisdiction to consider the matter. Although Defendants removed the action on the basis of federal question jurisdiction, they premise their argument on a statement in Plaintiff's application to the state court that "Plaintiff's Complaint seeks rescission of the mortgage under the Truth in Lending Act." (See Notice of

United States District Court

For the Northern District of California

1 Removal, Ex. B (Application for Temporary Restraining Order at 2:11-12.)

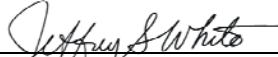
2 However, upon review of both Plaintiff's application to the state court and to this Court,
3 Plaintiff's request contains language referring to a different case with different defendants.
4 (See, e.g., Docket No. 14 (Application for Temporary Restraining Order at 7:3-25).) Moreover,
5 although Plaintiff's Complaint refers throughout to a Truth in Lending Good Faith Estimate,
6 Plaintiff asserts only state law claims and his claim for violations of Section 17200 does not
7 appear to rely on violations of federal law.

8 "The presence or absence of federal-question jurisdiction is governed by the 'well-
9 pleaded complaint rule.'" *Caterpillar Inc. v. Williams*, 482 U.S. 382, 392 (1987). The well-
10 pleaded complaint rule recognizes that the plaintiff is the master of his or her claim. "[H]e or
11 she may avoid federal jurisdiction by exclusive reliance on state law." *Id.* Thus, under the
12 well-pleaded complaint rule, federal-question jurisdiction arises where the "complaint
13 establishes either that federal law creates the cause of action or that the plaintiff's right to relief
14 necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd.*,
15 463 U.S. 1, 27-28 (1983). Accordingly, in their opposition brief to the ex parte application,
16 Defendants shall address the issue of why resolution of Plaintiff's claims necessarily depends
17 on resolution of a substantial question of federal law and why this matter should not be
18 remanded forthwith to the state court.

19 Defendants' opposition to the application for a temporary restraining shall be filed and
20 served by no later than 12:30 p.m. on March 23, 2010. The Court shall hold a hearing on the
21 Plaintiff's application at 3:00 p.m. on March 23, 2010. That hearing shall be vacated if the
22 Court determines it lacks jurisdiction over this matter.

23 **IT IS SO ORDERED.**

24
25 Dated: March 23, 2010


26 JEFFREY S. WHITE
27 UNITED STATES DISTRICT JUDGE
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